Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

SHELA[1] BACALTOS ASILO, Petitioner,	**G.R. No. 232269 [Formerly UDK 15799]**
	Present:
-versus-	GESMUNDO, *C.J.*, *Chairperson*, HERNANDO,* ZALAMEDA, ROSARIO, and MARQUEZ, *JJ.*
PRESIDING JUDGE MARIA LUISA LESLE[2] G. GONZALES-BETIC, Branch 225, Regional Trial Court, Quezon City, Respondent.	**Promulgated:** JUL 10 2024

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DECISION

GESMUNDO, *C.J.*:

In a petition for recognition of a foreign divorce decree, the nationality of the alien spouse, and the national law of the alien spouse, which recognizes the foreign divorce decree and thereby capacitates said alien spouse to remarry, must be specifically alleged in the initiatory pleading and duly proven in the course of trial.

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* On leave.

1 Referred to as "Sheila" in other parts of the *rollo* (pp. 2, 9, 72) and CA *rollo* (pp. 9, 125, 128). Nonetheless, the photocopy of her official government records, such as Certificate of Marriage (CA *rollo*, p. 69), indicate that her first name is "Shela," not "Sheila."

2 Referred to as "Leslie" in other parts of the *rollo* (pp. 9, 35, 75) and CA *rollo* (pp. 77, 95, 106). Nonetheless, the RTC Decision dated August 28, 2015 (CA *rollo*, p. 31) and the RTC Order dated December 11, 2015 (CA *rollo*, p. 34), indicate that her first name is Maria Luisa "Lesle," not Maria Luisa "Leslie."

This Appeal by *Certiorari*[3] seeks to reverse and set aside the June 20, 2016 Resolution[4] and the February 28, 2017 Resolution[5] of the Court of Appeals (CA) in CA-G.R. SP No. 144990. The CA denied the Petition for *Certiorari* assailing the August 28, 2015 Decision[6] and the December 11, 2015 Order[7] of Branch 225, Regional Trial Court, Quezon City (RTC) in Special Proceedings No. R-QZN-14-01825, which denied the Petition for Recognition of a Foreign Judgment of Divorce.

The Antecedents

On February 25, 2014, Shela Bacaltos Asilo (Shela) filed the instant Petition for Recognition of a Foreign Divorce[8] obtained in Hong Kong, Special Administrative Region of China. In her Petition, she alleged that, on November 1, 2002, she married Tommy Wayne Appling (Tommy) in Hong Kong. After the wedding, Shela and Tommy lived together in Hong Kong until August 11, 2011, when they decided to separate. They eventually obtained a divorce.[9]

On April 28, 2014, the RTC issued an Order finding the Petition sufficient in form and substance and set the case for hearing on June 27, 2014. The Order also directed Shela to cause the publication of the Order in a newspaper of general circulation once a week for three consecutive weeks. Shela was also ordered to serve a copy of the Order on the Office of the Solicitor General (OSG), the Office of the City Prosecutor in Quezon City (OCP), the National Statistics Office, and the Office of the Local Civil Registrar of Quezon City.[10]

On June 27 and July 25, 2014, the Petition was heard and the documents showing compliance with jurisdictional requirements were marked as Exhibits "A" to "F-1." The case was then set for presentation of Shela's

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3 *Rollo*, pp. 9-32.

4 *Id.* at 35–36. The June 20, 2016 Resolution in CA-G.R. SP No. 144990 was penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justices Noel G. Tijam (retired Member of this Court) and Eduardo B. Peralta, Jr. of the Fourth Division, Court of Appeals, Manila.

5 *Id.* at 38–39. The February 28, 2017 Resolution in CA-G.R. SP No. 144990 was penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justices Noel G. Tijam (retired Member of this Court) and Eduardo B. Peralta, Jr. of the Fourth Division, Court of Appeals, Manila.

6 CA *rollo*, pp. 27–31. The August 28, 2015 Decision in Special Proceedings No. R-QZN-14-01825 was penned by Presiding Judge Maria Luisa Lesle G. Gonzales-Betic of Branch 225, Regional Trial Court, Quezon City.

7 *Id.* at 33–35. The December 11, 2015 Order in Special Proceedings No. R-QZN-14-01825 was penned by Presiding Judge Maria Luisa Lesle G. Gonzales-Betic of Branch 225, Regional Trial Court, Quezon City.

8 *Id.* at 45–49.

9 *Id.* at 27.

10 *Id.*

evidence. On April 24, 2015, Shela appeared and testified. She reiterated the allegations in her Petition and added that Tommy is now married to another woman. No other witness was summoned and presented.[11]

To support the Petition, Shela offered the following Exhibits:

"A"	-	petition filed on February 25, 2014;
"B"	-	Order of Hearing dated April 18, 2014;
"B-1"	-	stamped receipt of the Order by OCP;
"B-2"	-	stamped receipt of the Order by the OSG;
"C" to "C-1"	-	Affidavit of Publication dated June 18, 2014, issued by the Metro Profile [through] its publisher Mr. Guillermo Domingo;
"D" to "D-1"	-	Metro Profile Newspaper issue of June 3-9, 2014, and page 5 thereof;
"E" to "E-1"	-	Metro Profile Newspaper issue of June 10-16, 2014, and page 5 thereof;
"F" to "F-1"	-	Metro Profile Newspaper issue of June 17-23, 2014, and page 5 thereof;
"G"	-	[Shela] and Tommy's Certificate of Marriage;
"H"	-	Decree of Absolute Divorce with the covering certification issued by the Office of the Vice-Consul of the Philippines;
"I"	-	Tommy's Marriage Contract with one Marichu [Rañon] Gumilao;[12]
"J"	-	letter dated August 4, 2014 sent by Tommy to [Shela]; and
"L"	-	wedding picture of Tommy and Marichu [Rañon] Gumilao.[13]

The State did not oppose Shela's offer. Thus, the RTC admitted the exhibits as part of Shela's testimony.[14]

The RTC Ruling

In its August 28, 2015 Decision, the RTC denied the Petition. The dispositive portion reads:

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11 *Id.*

12 Based on the photocopy of the Certificate of Marriage (CA *rollo*, p. 73), the actual name of Tommy's current wife is "Marichu Rañon Gumilao."

13 CA *rollo*, p. 28.

14 *Id.*

> **WHEREFORE,** the instant petition for recognition of a foreign judgment of divorce is **denied**.
>
> **SO ORDERED.**[15] (Emphasis in the original)

The RTC held that the Petition must fail. *First*, Shela did not present the law on divorce of Hong Kong. *Second*, the divorce decree was obtained by Shela, a Filipino citizen. To be recognized in the Philippines, the divorce must have been obtained by the foreign spouse. For these reasons, the Petition was denied.[16]

Shela moved for reconsideration of the RTC Decision, which the RTC denied in its December 11, 2015 Order.[17]

The CA Ruling

In its June 20, 2016 Resolution, the CA dismissed the Petition for *Certiorari* filed by Shela. The *fallo* reads:

> **WHEREFORE,** the present Petition is denied due course and consequently **DISMISSED.**
>
> **SO ORDERED.**[18] (Emphasis in the original)

The CA dismissed the Petition for *Certiorari* for being the wrong remedy to assail the RTC Decision and Order. It stated that, instead, Shela should have filed a notice of appeal under Rule 41 of the Rules of Court. It also observed that even if it were to treat the Petition for *Certiorari* as an appeal, it would have been deemed filed out of time. Finally, the CA held that the attached verification to the Petition for *Certiorari* was defective since the affiant did not state that the allegations are true and correct of her knowledge and belief. It also stated that the notarization in both the verification and certification on non-forum shopping did not indicate which competent evidence of identity was presented before the notary public.[19]

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15 *Id.* at 31.
16 *Id.* at 28–31.
17 *Id.* at 33–35.
18 *Rollo*, p. 36.
19 *Id.* at 35–36.

Shela filed a Motion for Reconsideration,[20] which the CA denied in its February 28, 2017 Resolution.[21]

The Petition

Shela questions the dismissal of her Petition for *Certiorari* by the CA. *Procedurally*, she argues that her meritorious cause should not be barred simply because of the defects cited by the CA. Further, she points out that she has cured the defective verification with the CA. She emphasizes that the substantive issues in her Petition should be resolved instead of dismissing it on mere procedural grounds.[22] As to her resort to a petition for *certiorari* under Rule 65 instead of Rule 41 before the CA, Shela argues that she availed of the proper and right remedy.[23]

Substantively, Shela argues that the assailed ruling is contrary to *Fujiki v. Marinay.*[24] She further asserts that there is a fundamental public interest involved since she will be bound to carry the last name of Tommy if her Petition for Recognition is dismissed. As to the fact that she appears as the petitioner in the divorce petition in Hong Kong, she contends that she applied for it at the urgings and pressures exerted on her by Tommy. She also emphasizes that Tommy has validly entered into another marriage with a Filipina, proving without a doubt that the foreign judgment has been recognized. She also contends that another ground to grant the Petition is the permanent and irreversible incapacity of Tommy to carry out the obligations of marriage under Article 36 of the Family Code. In other words, she argues that Tommy suffers from psychological incapacity.[25]

In its October 4, 2017 Comment,[26] the OSG argues that Shela availed of the wrong remedy in questioning the RTC rulings when she resorted to a petition for *certiorari* under Rule 65 instead of an appeal under Rule 41. Further, even if her Petition for *Certiorari* were to be treated as an appeal, it would have been filed out of time. Her Petition for *Certiorari* also failed to allege that (1) the RTC acted without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (2) there is no appeal or other plain, speedy, and adequate remedy in the ordinary course of law. The OSG contends that Shela only raises errors of judgment, not errors of jurisdiction. Further, it argues that Shela filed the Petition for *Certiorari* as

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20 *Id.* at 40–68.
21 *Id.* at 38–39.
22 *Id.* at 14–18.
23 *Id.* at 28–29.
24 712 Phil. 524 (2013) [Per J. Carpio, Second Division].
25 *Rollo*, pp. 21–28.
26 *Id.* at 82–97.

a substitute for a lost appeal. On this ground alone, the appeal should be dismissed.[27] On the substance, the OSG claims that the second paragraph of Article 26 of the Family Code precludes the recognition of a foreign divorce decree when the same was obtained by the Filipino spouse. Here, Shela herself obtained the divorce decree. The OSG asserts that Shela's citation of *Fujiki* is misleading. As pointed out by the RTC, the Court in *Fujiki* merely ordered the trial court to reinstate the petition for recognition to its docket. It was not a case where the Court granted the petition for recognition of the divorce filed by a Filipino spouse, as alleged by Shela. Hence, the petition for recognition herein was rightfully dismissed by the lower court.[28]

In Shela's April 20, 2018 Reply,[29] she maintains that she resorted to the correct remedy in assailing the RTC rulings since vital questions of law affecting public interest are involved. Further, she points out that the ruling of the lower courts is contrary to *Fujiki* and *Republic v. Orbecido*.[30] Grave abuse of discretion, she contends, may also refer to cases in which, for various reasons, there has been a gross misapprehension of facts. She reiterates the arguments raised in her Petition. She stresses that the legislative intent – to avoid the absurd situation where a Filipino spouse remains married to an alien spouse who, after obtaining a divorce, is no longer married to the Filipino spouse – must be given life.[31]

Issues

The Petition raises the following issues:

I

WHETHER THE VALID FOREIGN DIVORCE JUDGMENT IN THIS CASE WHICH THE COURT [*A QUO*] DENIED IN FAVOR OF THE FILIPINO WIFE/PETITIONER IS CONTRARY TO THE RULING OF THE SUPREME COURT IN *FUJIKI V. MARIA PAZ GALELA MARINAY* (G.R. NO. 196049, JUNE 26, 2013).

II

WHETHER BY VIRTUE OF THE VALID FOREIGN DIVORCE JUDGMENT THE WIFE/PETITIONER CAN TAKE BACK HER FULL MAIDEN NAME AND SURNAME SHELA BACALTOS ASILO DROPPING HER PRESENT SURNAME APPLING.

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27 *Id.* at 86–92.
28 *Id.* at 92–94.
29 *Id.* at 103–121.
30 509 Phil. 108 (2005) [Per J. Quisumbing, First Division].
31 *Rollo*, pp. 105–118.

III

WHETHER THE PERMANENT AND IRREVERSIBLE FAILURE AND INCAPACITY OF RESPONDENT TOMMY WAYNE APPLING TO CARRY OUT HIS MARITAL OBLIGATIONS UNDER ARTICLE 36 OF THE FAMILY CODE CAN BE TAKEN AS A GROUND AND ISSUE IN TAKING RECOGNITION OF THE LITIGATED VALIDITY FOREIGN DIVORCE JUDGMENT IN FAVOR OF THE HEREIN WIFE/PETITIONER.

IV

WHETHER THE HIGHER PRINCIPLE AND NORM OF THE HOLY SCRIPTURES IN MATTHEW 5:31, 32 RECOGNIZING THE GROUND OF FORNICATION/CONCUBINAGE ON THE PART OF THE HUSBAND AS A VALID GROUND FOR DIVORCE BE TAKEN INTO CONSIDERATION IN FAVOR OF THE HEREIN WIFE/PETITIONER.[32]

Our Ruling

The Appeal is denied for lack of merit.

Shela failed to allege in her initiatory pleading before the RTC the nationality of Tommy. Consequently, she also failed to aver in her initiatory pleading his national law and the fact that said national law recognizes the effects of the divorce decree secured in Hong Kong, thereby capacitating Tommy to remarry. These averments are ultimate facts, which are constitutive of Shela's cause of action, and their absence is fatal to her Petition.

The CA did not seriously err when it dismissed Shela's Petition for Certiorari on procedural grounds

Preliminarily, the Court must first discuss the procedural aspect of the instant case.

The CA refused to give due course to the Petition for *Certiorari* filed before it and, instead, dismissed the Petition on procedural grounds: (1) that Shela resorted to the wrong remedy; and (2) that her verification and certification against forum shopping is infirm. In resolving the present Appeal, the Court must keep in mind that the issue before it is whether the CA

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[32] *Id.* at 18–19.

seriously erred in denying due course to the Petition and in dismissing it on these procedural grounds.

The Court tackles the two grounds in inverse order.

The CA held that Shela's verification was defective since she, being the affiant, did not state that the allegations are true and correct of her knowledge and belief.

The Court disagrees.

The Verification[33] in the instant case provides:

. . . .

2. I have caused the preparation of the foregoing Petition, [through] my counsel; I have read and understood all the allegations contained therein and they are true and correct of her own personal knowledge.

The CA took exception to the failure of Shela to expressly state that the allegations are true and correct of her knowledge **and belief.**

Rule 7, Section 4 of the 1997 Revised Rules of Civil Procedure prevailing at the time the verification was executed provides:

> Section 4. *Verification.* — Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.
>
> A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.
>
> A pleading required to be verified which contains a verification based on "information and belief," or upon "knowledge, information and belief," or lacks a proper verification shall be treated as an unsigned pleading.[34]

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33 CA *rollo*, p. 24.
34 As amended by A.M. No. 00-2-10 SC (2000).

First, it must be emphasized that the requirement is to state in the verification that the affiant has read the pleading and that all allegations therein are true and correct of the affiant's personal knowledge *or* based on authentic records. Contrary to the CA's disposition, the requirement is not to state that the allegations are true and correct of the affiant's personal knowledge and belief. In fact, the 1997 Revised Rules of Civil Procedure expressly provides that a pleading accompanied by such verification would be considered an unsigned pleading.

Second, the Court has previously held that a verification is not rendered defective because it does not include the phrase "or based on authentic records." The provision used the disjunctive word "or," which indicates an alternative. The phrases "personal knowledge" and "authentic records" need not concur in a verification as they may be taken separately.[35] Thus, the verification by Shela based on her own personal knowledge is sufficient.

Meanwhile, as to the supposed defect in the notarization of the verification due to the failure to state which competent evidence of identity was presented before the notary public, suffice to say that the Court previously held that a notary public may be excused from requiring the presentation of competent evidence of identity if the signatory is personally known to him.[36] Such is the case herein, as the notary public was Shela's counsel himself.

However, on the matter of the correctness of the remedy availed of, the Court agrees with the CA.

Shela assailed the RTC August 28, 2015 Decision and December 11, 2015 Order by instituting a Petition for *Certiorari* before the CA.

Rule 41, Section 2 of the Rules of Court provides the modes of appeal from a RTC judgment or final order:

> Section 2. *Modes of Appeal.* —
>
> (a) *Ordinary appeal.* — *The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party.* No record on appeal shall be required except

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[35] *Heirs of Spouses Mesina v. Heirs of Fian, Sr.*, 708 Phil. 327, 335 (2013) [Per J. Velasco, Jr., Third Division].

[36] *Jorge v. Marcelo*, 849 Phil. 707, 719–720 (2019) [Per J. Peralta, Third Division].

> in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.
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> (b) *Petition for review.* — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.
>
> (c) *Appeal by certiorari. — In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on certiorari in accordance with Rule 45.* (Emphasis supplied)

The pertinent RTC rulings were rendered by the latter in the exercise of its original jurisdiction. Accordingly, Shela should have taken either an ordinary appeal, under Rule 41, Section 2(a) or an appeal by *certiorari* under Rule 45. The proper mode of appeal depends on the kind of questions raised. If questions of facts or mixed questions of fact and law are involved, then recourse to the CA should have been taken through an ordinary appeal under Rule 41, Section 2(a). However, if only pure questions of law are involved, then the proper recourse would be an appeal by *certiorari* under Rule 45 to this Court. *Certiorari* under Rule 65 is not one of the modes of appeal provided in Rule 41, Section 2.

Scrutiny of the Petition for *Certiorari* before the CA reveals that mixed questions of fact and law are involved. The factual issue raised was whether the Hong Kong law on divorce was properly proven. The legal issue involved is whether a divorce decree secured by the Filipino spouse on her own initiative could be judicially recognized in Our jurisdiction. Thus, the proper mode of appeal for Shela was an ordinary appeal. She should have filed a notice of appeal with the RTC within 15 days from notice of the judgment or final order appealed from.[37]

In the instant case, Shela, by her own admission, received a copy of the December 11, 2015 Order of the RTC on January 26, 2016.[38] Accordingly, she had 15 days, or until February 10, 2016, to file a notice of appeal with the RTC under Rule 41. Instead of doing so, Shela filed a Petition for *Certiorari* under Rule 65 on April 6, 2016.[39] In said Petition, she alleged that she had 60 days, or until March 26, 2016 to file the Petition for *Certiorari*.[40]

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37 RULES OF COURT, Rule 41, sec. 3.
38 CA *rollo*, p. 10.
39 *Id.* at 9.
40 *Id.* at 10.

It is clear that Shela availed of the wrong remedy. Instead of filing an ordinary appeal under Rule 41, she resorted to a petition for *certiorari* under Rule 65. This cannot be countenanced because it is well-established that ". . . a special civil action for *certiorari* under Rule 65 is an independent action based on the specific grounds therein provided and proper only if there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. It is an extraordinary process for the correction of errors of jurisdiction and cannot be availed of as a substitute for the lost remedy of an ordinary appeal."[41] Here, there was an appeal or a plain, speedy, and adequate remedy available to Shela to question the RTC rulings—that of an ordinary appeal under Rule 41. Shela squandered this remedy and, instead, filed a Petition for *Certiorari.*

The fact that the Petition for *Certiorari* was a substitute for a lost appeal is made obvious by the fact that Shela did not allege any grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC in said pleading. Rather, the grounds contained in said Petition are mere errors of judgment on the part of the RTC.

In *Madrigal Transport Inc. v. Lapanday Holdings Corporation,*[42] the Court elucidated that *certiorari*, as a remedy, is solely intended to correct errors of jurisdiction:

> *As to the Purpose. Certiorari is a remedy designed for the correction of errors of jurisdiction, not errors of judgment.* In *Pure Foods Corporation v. NLRC*, [W]e explained the simple reason for the rule in this light:
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> > "When a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. This cannot be allowed. The administration of justice would not survive such a rule. Consequently, an error of judgment that the court may commit in the exercise of its jurisdiction is not correct[a]ble through the original civil action of *certiorari*."
>
> The supervisory jurisdiction of a court over the issuance of a writ of *certiorari* cannot be exercised for the purpose of reviewing the intrinsic correctness of a judgment of the lower court — on the basis either of the law or the facts of the case, or of the wisdom or legal soundness of the decision. Even if the findings of the court are incorrect, as long as it has

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41 *PAGCOR v. Court of Appeals*, 839 Phil. 122, 129 (2018) [Per J. Gesmundo, Third Division].
42 479 Phil. 768 (2004) [Per J. Panganiban, Third Division].

> jurisdiction over the case, such correction is normally beyond the province of *certiorari*. *Where the error is not one of jurisdiction, but of an error of law or fact — a mistake of judgment — appeal is the remedy.*[43] (Emphasis supplied; citations omitted)

The substantive grounds raised by Shela in the instant appeal are the exact same ones she raised before the CA on *certiorari.*[44] They center on the alleged erroneous denial of the RTC of her Petition for Recognition of Foreign Divorce Decree due to the failure to prove Hong Kong law and due to the divorce having been obtained by the Filipino spouse. The errors alleged are merely errors of judgment. "Errors of judgment include errors of procedure or mistakes in the court's findings. Where a court has jurisdiction over the person and subject matter, the decision on all other questions arising in the case is an exercise of that jurisdiction. Consequently, all errors committed in the exercise of such jurisdiction are merely errors of judgment."[45] Once more, the Court reiterates that *certiorari* cannot be a substitute for a lost appeal.

The Court is mindful of the fact that there have been instances where it relaxed the stringent application of this rule. This Court has, before, "treated a petition for *certiorari* as a petition for review on *certiorari*, particularly (1) if the petition for *certiorari* was filed within the reglementary period within which to file a petition for review on *certiorari*; (2) when errors of judgment are averred; and (3) when there is sufficient reason to justify the relaxation of the rules."[46] However, the rules cannot be relaxed in the instant case because the Petition for *Certiorari* before the CA was filed outside the reglementary period provided for an ordinary appeal under Rule 41. There is also no sufficient reason to justify the relaxation of the rules, as will be discussed below.

The CA did not seriously err by ruling in the manner it did. It merely applied the procedural rules, which are in place for the speedy and equitable administration of justice. Considering that the Petition for *Certiorari* before the CA was a substitute for a lost appeal, the August 28, 2015 Decision and the December 11, 2015 Order of the RTC had attained finality. To reiterate, the RTC denied the Petition for Recognition of a Foreign Decree. This denial has attained finality. On this score, the instant Appeal may be dismissed.

Nonetheless, for a full disposition of the issues involved in the instant case and to elucidate the absence of sufficient reasons to relax the strict

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43 *Id.* at 779–780.
44 CA *rollo*, pp. 14–22.
45 *Microsoft Corporation v. Best Deal Computer Center Corporation*, 438 Phil. 408, 415 (2002) [Per J. Bellosillo, Second Division].
46 *Tagle v. Equitable PCI Bank*, 575 Phil. 384, 403 (2008) [Per J. Chico-Nazario, Third Division].

application of the rules, the Court will proceed to discuss the substantive issues.

The RTC denied the Petition for Recognition of the Foreign Divorce Decree on two grounds: (1) that the foreign divorce decree was obtained by Shela, the Filipino spouse, and (2) that Shela failed to prove the Hong Kong law on divorce.

The fact that it was the Filipino spouse who initiated the divorce proceedings is irrelevant in determining whether the foreign divorce decree should be recognized in Our jurisdiction

In the seminal case of *Republic v. Manalo*,[47] the Court settled with finality the issue of whether a foreign divorce decree initiated by a Filipino spouse, instead of the foreign spouse, may be recognized in Our jurisdiction. The Court answered this in the affirmative, stating that there is no distinction between the effects of a foreign divorce obtained by the foreign spouse and that obtained by the Filipino spouse. Hence, the Court held that a foreign divorce decree obtained by a Filipino spouse on their own initiative may be recognized in Our jurisdiction:

> Now, the Court is tasked to resolve whether, under the same provision, a Filipino citizen has the capacity to remarry under Philippine law after initiating a divorce proceeding abroad and obtaining a favorable judgment against his or her alien spouse who is capacitated to remarry. . . .
>
> We rule in the affirmative.
>
> Both *Dacasin v. Dacasin* and *Van Dorn* already recognized a foreign divorce decree that was initiated and obtained by the Filipino spouse and extended its legal effects on the issues of child custody and property relation, respectively.
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> . . . .
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> In addition, the fact that a validly obtained foreign divorce initiated by the Filipino spouse can be recognized and given legal effects in the Philippines is implied from Our rulings in *Fujiki v. Marinay, et al.* and *Medina v. Koike*.

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47 831 Phil. 33 (2018) [Per J. Peralta, *En Banc*].

. . . .

There is no compelling reason to deviate from the above-mentioned rulings. When this Court recognized a foreign divorce decree that was initiated and obtained by the Filipino spouse and extended its legal effects on the issues of child custody and property relation, it should not stop short in likewise acknowledging that one of the usual and necessary consequences of absolute divorce is the right to remarry. Indeed, there is no longer a mutual obligation to live together and observe fidelity. When the marriage tie is severed and ceased to exist, the civil status and the domestic relation of the former spouses change as both of them are freed from the marital bond.

. . . .

To reiterate, the purpose of Paragraph 2 of Article 26 is to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after a foreign divorce decree that is effective in the country where it was rendered, is no longer married to the Filipino spouse. *The provision is a corrective measure to address an anomaly where the Filipino spouse is tied to the marriage while the foreign spouse is free to marry under the laws of his or her country. Whether the Filipino spouse initiated the foreign divorce proceeding or not, a favorable decree dissolving the marriage bond and capacitating his or her alien spouse to remarry will have the same result: the Filipino spouse will effectively be without a husband or wife.* A Filipino who initiated a foreign divorce proceeding is in the same place and in like circumstance as a Filipino who is at the receiving end of an alien initiated proceeding. Therefore, the subject provision should not make a distinction. In both instance, it is extended as a means to recognize the residual effect of the foreign divorce decree on Filipinos whose marital ties to their alien spouses are severed by operation of the latter's national law.

. . . .

On the contrary, there is no real and substantial difference between a Filipino who initiated a foreign divorce proceedings [*sic*] and a Filipino who obtained a divorce decree upon the instance of his or her alien spouse. In the eyes of the Philippine and foreign laws, both are considered as Filipinos who have the same rights and obligations in an alien land. The circumstances surrounding them are alike. Were it not for Paragraph 2 of Article 26, both are still married to their foreigner spouses who are no longer their wives/husbands. Hence, to make a distinction between them based merely on the superficial difference of whether they initiated the divorce proceedings or not is utterly unfair. Indeed, the treatment gives undue favor to one and unjustly discriminate against the other.[48] (Emphasis supplied, citations omitted)

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[48] *Id.* at 52–62.

In the instant case, one of the grounds for the RTC's denial of the Petition for Recognition of the Foreign Decree is that Shela, the Filipino spouse, was the one to apply for it. With the Court's disquisition in *Manalo*, there is no longer any controversy on this score. The fact that the foreign divorce was obtained by Shela against Tommy is not fatal to her cause.

Nevertheless, the RTC still had sufficient legal basis for its denial: that Shela failed to allege and prove the applicable foreign law on divorce.

In a petition for recognition of a foreign divorce decree, both the foreign judgment providing for the absolute divorce and the national law of the alien spouse, which recognizes the absolute divorce and capacitates said alien spouse to remarry, must be alleged and proven as fact

It is well-established that "[t]he recognition of the foreign divorce decree may be made in a Rule 108 proceeding itself, as the object of special proceedings (such as that in Rule 108 of the Rules of Court) is precisely to establish the status or right of a party or a particular fact."[49]

Shela thus filed her Petition for Recognition of Foreign Divorce[50] under Rule 108, citing Section 1 thereof in her initiatory pleading before the RTC.

Rule 108 is a special proceeding. Its procedure is governed by the Rules of Civil Procedure, in accordance with Rule 1, Section 3,[51] thereof. Furthermore, Rule 72, Section 2 provides that "[i]n the absence of special provisions, the rules provided for in ordinary actions shall be, as far as practicable, applicable in special proceedings."

Meanwhile, divorce, which is the legal dissolution of a lawful union for a cause arising after marriage, may be classified into two types: (1) absolute divorce or a *vinculo matrimonii*, which terminates the marriage, and (2)

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49 *Corpuz v. Sto. Tomas*, 642 Phil. 420, 437 (2010) [Per J. Brion, Third Division].

50 CA *rollo*, pp. 45–49.

51 SEC. 3. *Cases governed* – These Rules shall govern the procedure to be observed in actions, civil or criminal and special proceedings.

. . . .

(c) A special proceeding is a remedy by which a party seeks to establish a status, a right, or a particular fact.

limited divorce or *a mensa et thoro*, which suspends it and leaves the bond in full force.[52] Pertinent to this are the rules concerning divorce in Philippine jurisdiction:

1. Philippine law does not provide for absolute divorce; hence, our courts cannot grant it.

2. Consistent with Articles 15 and 17 of the New Civil Code, the marital bond between two Filipinos cannot be dissolved even by an absolute divorce obtained abroad.

3. An absolute divorce obtained abroad by a couple, who are both aliens, may be recognized in the Philippines, provided it is consistent with their respective national laws.

4. In mixed marriages involving a Filipino and a foreigner, the former is allowed to contract a subsequent marriage in case the absolute divorce is validly obtained abroad by the alien spouse capacitating him or her to remarry.[53]

The fourth rule, found in the second paragraph of Article 26(2) of the Family Code, is pertinent to the instant case. It involves an absolute divorce obtained from a tribunal of a foreign country. Rule 39, Section 48 of the Rules of Court provides that the judgment or final order of a tribunal of a foreign country against a person constitutes presumptive evidence of a right as between the parties:

> Section 48. *Effect of Foreign Judgments or Final Orders.* — The effect of a judgment or final order of a tribunal of a foreign country, having jurisdiction to render the judgment or final order is as follows:
>
> (a) In case of a judgment or final order upon a specific thing, the judgment or final order is conclusive upon the title to the thing; and
>
> *(b) In case of a judgment or final order against a person, the judgment or final order is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title.*

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52 *Republic v. Manalo*, 831 Phil. 33, 48 (2018) [Per J. Peralta, *En Banc*].
53 *Id.* at 48–49.

> In either case, the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact. (Emphasis supplied)

To validly recognize an absolute divorce on the basis of Article 26(2) of the Family Code, both the foreign judgment providing for the absolute divorce and the national law of the alien spouse, which recognizes the absolute divorce and capacitates said alien spouse to remarry, must be alleged and proven as fact:

> The starting point in any recognition of a foreign divorce judgment is the acknowledgment that our courts do not take judicial notice of foreign judgments and laws. Justice Herrera explained that, as a rule, 'no sovereign is bound to give effect within its dominion to a judgment rendered by a tribunal of another country.' *This means that the foreign judgment and its authenticity must be proven as facts under our rules on evidence, together with the alien's applicable national law to show the effect of the judgment on the alien [themselves].* The recognition may be made in an action instituted specifically for the purpose or in another action where a party invokes the foreign decree as an integral aspect of his claim or defense.[54] (Emphasis supplied, citations omitted)

Rule 8, Section 1 of the 1997 Rules of Civil Procedure provides that every pleading must contain ultimate facts on which the party pleading relies for their claim:

> Section 1. *In general.* — Every pleading shall contain in a methodical and logical form, a plain, concise and direct statement of the ultimate facts on which the party pleading relies for his claim or defense, as the case may be, omitting the statement of mere evidentiary facts. (1)

This provision was amended, as follows, in the 2019 Revised Rules of Civil Procedure:

> Section 1. *In general.* — Every pleading shall contain in a methodical and logical form, a plain, concise and direct statement of the ultimate facts, *including the evidence* on which the party pleading relies for his or her claim or defense, as the case may be. (Emphasis supplied)

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[54] *Corpuz v. Sto. Tomas*, 642 Phil. 420, 432–433 (2010) [Per J. Brion, Third Division].

The second paragraph of Rule 144, as amended, in turn provides that:

> The 2019 Proposed Amendments to the 1997 Rules of Civil Procedure shall govern all cases filed after their effectivity on May 1, 2020, and also all pending proceedings, except to the extent that in the opinion of the court, their application would not be feasible or would work injustice, in which case the procedure under which the cases were filed shall govern.

Clearly, it would work injustice for the Court to make applicable the amendment concerning the inclusion of evidence in Shela's pleading. Accordingly, the Court will only apply the requirement of alleging the ultimate facts, as required by the rules prior to their amendment.

The Court defined the phrase "ultimate facts" in *Remitere v. Vda. de Yulo*[55] in this wise:

> "*Ultimate facts defined.*—The term 'ultimate facts' as used in sec. 3, Rule 3 of the Rules of Court, means *the essential facts constituting the plaintiff's cause of action. A fact is essential if it cannot be stricken out without leaving the statement of the cause of action insufficient . . .*" (Moran, Rules of Court, Vol. 1. 1963 ed. p. 213).
>
> "Ultimate facts are *important and substantial facts which either directly form the basis of the primary right and duty*, or which directly make up the wrongful acts or omissions of the defendant. The term does not refer to the details of probative matter or particulars of evidence by which these material elements are to be established. It *refers to principal, determinate, constitutive facts, upon the existence of which, the entire cause of action rest.*" (Montemayor *vs.* Raborar, et al., 53 Off. Gaz. No. 19, p. 6596, citing Pomeroy, Code Remedies, 5th Ed. sec. 420)[56] (Emphasis supplied)

In a petition for recognition of a foreign divorce decree, the foreign judgment providing for the absolute divorce and the national law of the alien spouse, which recognizes the absolute divorce and capacitates said alien spouse to remarry, constitute ultimate facts. These are principal, determinate, and constitutive facts upon which the entire cause of action rests. Of course, there are other ultimate facts that must be similarly alleged, such as the fact of marriage between a Filipino and an alien spouse. Nonetheless, being ultimate facts, they must be alleged in the initiatory pleading and proven during trial.

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55 123 Phil. 57 (1966) (Per J. Zaldivar].
56 *Id.* at 62.

In the instant case, the Petition for Recognition of Foreign Divorce[57] filed before the RTC lacks key ultimate facts. There is an absolute absence of allegation concerning Tommy's nationality at the time the divorce decree was secured in Hong Kong. His nationality was not alleged in the pleadings before the RTC. It was also not alleged in any of the pleadings filed before this Court. Since there is no allegation concerning Tommy's nationality, it follows that there is also no allegation of his national law, and no allegation that such national law recognizes the Hong Kong divorce decree, thereby capacitating Tommy to remarry. Due to the absence of these ultimate facts, the cause of action of Shela was not established in her initiatory pleading. Consequently, no evidence was presented to prove the same.

Unfortunately, neither the RTC nor the OSG seemed to have noticed the glaring absence of these key ultimate facts in the Petition or the absence of evidence in support thereof. In fact, the RTC seemed to have erroneously equated the fact that the divorce decree was secured in Hong Kong to mean that it is the Hong Kong law on divorce which must be proven. This is an absolute oversight on its part.

The Court emphasizes that the nationality of the foreign spouse will not always be the same as the jurisdiction where the foreign divorce was secured. It is a complete error on the part of lower courts to make this assumption.

At this juncture, it must be stated that Shela submitted in evidence Tommy's Marriage Contract with one Marichu Rañon Gumilao. This marriage was allegedly contracted after the finality of the divorce decree. Said document indicates that Tommy is of American nationality.

Unfortunately for Shela, this cannot be treated as an allegation of Tommy's nationality. Even if such document were to be given full faith and credence, it only shows Tommy's nationality at the time of his subsequent marriage. It says nothing of his nationality at the time the divorce decree was obtained. Nationality is subject to change, after all. Furthermore, the allegations of Tommy's nationality and his national law recognizing the absolute divorce secured in Hong Kong, thereby capacitating him to remarry, should have been made in the initiatory pleading since such averments are material and constitutive of Shela's cause of action for recognition of a foreign divorce decree.

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[57] CA *rollo*, pp. 45–49.

Again, the substantive basis of Shela's action lies in Article 26(2) of the Family Code. The deliberations on the Family Code show that Article 26(2) has the effect of (i) enforcing divorce decrees which are binding on foreign nationals under their national law; and (ii) recognizing the *residual* effect of such foreign divorce decrees on their Filipino spouses who are bound by the prohibition against absolute divorce under the Civil Code.[58]

Plainly, Shela's right to recognition of the foreign divorce decree, and its effects, is contingent on the actual effect of such foreign divorce on Tommy. After all, it is only the residual effect of the divorce that will be given recognition by Our jurisdiction. This is evident in the rationale behind Article 26(2), which is "to avoid the absurd situation of a Filipino still being married to [their] alien spouse, although the latter is no longer married to the former because [they] had obtained a divorce abroad that is recognized by [their] national law. The aim was that it would solve the problem of many Filipino women who, under the New Civil Code, are still considered married to their alien husbands even after the latter have already validly divorced them under their (the husbands') national laws and perhaps have already married again."[59]

Notably, Shela emphasizes in her pleadings that Tommy has remarried another Filipina in the Philippines. According to her, this demonstrates that the foreign judgment has been recognized and proven without doubt.[60]

The Court disagrees. The fact that Tommy was able to remarry in the Philippines does not constitute proof that the foreign judgment has already been recognized and proven in Our jurisdiction.

It is well-established in Our jurisdiction that the foreign judgment and the applicable national law must be admitted in evidence and proven as a fact pursuant to Rule 132, Sections 24 and 25 of the Rules of Court. Thus, these may be proven by (1) an official publication, or (2) a copy attested by the officer having legal custody of the judgment. If the record is not kept in the Philippines, the certificate may be made by a secretary of the embassy or legation, consul-general, consul, vice-consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept and authenticated by the seal of his office.

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58 J. Caguioa, Dissenting Opinion in *Republic v. Manalo*, 831 Phil. 33, 90 (2018) [Per J. Peralta, *En Banc*].
59 *Republic v. Manalo*, 831 Phil. 33, 50 (2018) [Per J. Peralta, *En Banc*].
60 *Rollo*, p. 23.

The remarriage of the alien spouse is not considered evidence of the foreign judgment or even of the alien spouse's capacity to remarry.

At this juncture, for purposes of clarity, the Court states that in a petition for recognition of a foreign divorce decree on the basis of Article 26(2) of the Family Code, the ultimate facts that must be alleged are as follows:

1. The celebration of a marriage between a Filipino and an alien;

2. The subsequent acquisition of an absolute divorce in a foreign jurisdiction;

3. The nationality of the alien spouse at the time the absolute divorce was obtained; and

4. The national law of the alien spouse, which recognizes the absolute divorce and capacitates said alien spouse to remarry.

These ultimate facts are in addition to the jurisdictional facts that must be alleged in the petition.

Due to the absence of both allegation and proof as to (1) the nationality of Tommy, and (2) his national law, which recognizes the absolute divorce obtained in Hong Kong thereby capacitating him to remarry, the Court cannot recognize the foreign judgment and allow Shela to reclaim her name and surname prior to their marriage, as prayed for.

The Court is aware of recent jurisprudence[61] where the Court opted to remand the case to the lower court for reception of evidence concerning the national law of the alien spouse. Unfortunately, the Court cannot apply the same ruling here.

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[61] *Rivera v. Republic*, G.R. No. 238259 (Notice), February 17, 2021; *Kondo v. Civil Registrar General*, 872 Phil. 251 (2020) [Per J. Lazaro-Javier, First Division]; *Moraña v. Republic*, 867 Phil. 578 (2019) [Per J. Lazaro-Javier, First Division]; *Nullada v. Civil Registrar of Manila*, 846 Phil. 96 (2019) [Per J. Reyes, Jr., Third Division Division]; *Juego-Sakai v. Republic*, 836 Phil. 810 (2018) [Per J. Peralta, Second Division]; *Morisono v. Morisono*, 834 Phil. 823 (2018) [Per J. Perlas-Bernabe, Second Division]; and *Republic v. Manalo*, 831 Phil. 33 (2018) [Per J. Peralta, *En Banc*].

The initiatory pleading of Shela plainly lacks ultimate facts. This is in contrast to the cases where the Court ordered a remand. In those cases, there was no issue as to the initiatory pleadings filed. Rather, the Court found it best to remand since the only issue involved was the lack of proof concerning the national law of the alien spouse. Here, the procedural deficiency of Shela's initiatory pleading, coupled with her procedural lapse in assailing the RTC rulings, pushes the Court to affirm the denial of her Petition for Recognition of a Foreign Divorce Decree. Shela will benefit from a clean slate, rather than a remand.

The denial of a petition for recognition of foreign judgment pertaining to a person's status will not constitute *res judicata.*[62] Shela may simply file anew.

With regard to Shela's claim of psychological incapacity on the basis of Article 36 of the Family Code, suffice to say that the same does not merit the Court's attention since the initiatory pleading plainly lacks allegations concerning such cause of action. The case was not tried as one for judicial declaration of nullity of marriage, and no evidence was presented to buttress this claim.

ACCORDINGLY, the Appeal by *Certiorari* is **DENIED**. The June 20, 2016 and the February 28, 2017 Resolutions of the Court of Appeals in CA-G.R. SP No. 144990 are **AFFIRMED.**

SO ORDERED.

ALEXANDER G. GESMUNDO
Chief Justice

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62 See *Kondo v. Civil Registrar General*, 872 Phil. 251, 263 (2000) [Per J. Lazaro-Javier, First Division].

WE CONCUR:

(On leave)
RAMON PAUL L. HERNANDO
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice